

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 312 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE FINANCIAL CORPORATION

Versus

BHALABHAI LILABHAI DESAI

Appearance:

1. Appeal from Order No. 312 of 1999
MR HS MUNSHAW for Petitioner No. 1
MR TS NANAVATI for Respondent No. 1
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CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 25/09/2001

ORAL JUDGEMENT

1. The appellant - G.S.F.C. is the original defendant. By way of this Appeal the appellant has challenged the impugned order dated 26.2.1999 passed by the learned 4th Joint Civil Judge (SD), Bharuch, below

Ex.5 in Special Civil Suit No.109 of 1997 whereby the learned Judge allowed the Application Ex.5 and restrained the defendant - Corporation from taking back the possession of the Suit house till final disposal of the Suit.

2. Initially notice was ordered to be issued on 25.6.1999 by the learned Single Judge of this Court making it returnable on 15.7.1999 and after hearing the other side it was admitted by another learned single Judge of this Court on 16.2.2000 and the hearing of it was fixed on 9.3.2000. However, learned Judge made it clear that pendency of this Appeal before this Court will not be a bar for the trial Court to proceed with the Suit. The learned Single Judge also observed that on the contrary it is desirable that the trial Court must proceed with the Suit and dispose of the same as early as possible.

3. The above order of admission and final hearing of the Appeal with aforesaid observation was passed way back on 16.2.2000. As desired by the learned Single Judge of this Court by now the Suit should have come to an end finally, but unfortunately it is not. Shri Nanavati, learned Counsel appearing for the respondent - original plaintiff stated at the bar that the Suit is still pending before the trial Court.

4. Having carefully gone through the impugned order passed by the learned Judge below Ex.5 I am fully convinced that if the plaintiff was not protected by an interim order then the Suit filed by him would have become infructuous. Having regard to the peculiar facts and circumstances of the case it cannot be said that the learned Judge has committed any error while allowing the Application Ex.5 by passing the impugned order dated 26.2.1999.

5. In view of the above, this Appeal is required to be dismissed. However, learned Counsel Shri Nanavati for the respondent - original plaintiff stated at the bar that till the final disposal of the Suit the respondent plaintiff shall not transfer or alienate the property in question to any one else. This takes care of the interest of the appellant - Corporation also. Accordingly while disposing of this Appeal the respondent - plaintiff is directed to file an Undertaking to the aforesaid fact before the trial Court within 4 weeks from today.

6. Before parting I must state that once the learned

Single Judge of this Court expressed the hope that the Suit be disposed of as early as possible then it was the bounden duty of the learned trial Judge to see that it shall be decided as early as possible. It is true that no time limit was given by the learned Judge for disposing of the Suit, but when the learned Single Judge has observed that the Suit is disposed of as early as possible then the learned trial Judge should have tried to dispose of the Suit as early as possible. As stated at the bar the Suit is so far not decided. Therefore, now the learned trial Judge is directed to decide the Special Civil Suit No.109 of 1997 as early as possible and not later than 30th April 2002. The parties shall fully cooperate with the final disposal of the Suit.

As the main Appeal from Order No.312 of 1999 is disposed of, Civil Application No.5732 of 1999 will not survive. Accordingly the same is disposed of.

sd/-

Date : September 25, 2001 (B.J.Shethna, J.)

sas